

REMARKS

This Preliminary Amendment constitutes the proper Submission with the RCE being concurrently filed and fully complies with M.P.E.P. § 706.07(h)(II).

Applicants respectfully request the Examiner to reconsider the present application in view of the foregoing amendments to the claims and the following remarks.

Status of the Claims

In the present Amendment, claims 3, 5, 7, 18, 23, 25 and 26 have been amended. Also, claim 27 is presently canceled, wherein claims 1, 2, 4, 10-17, 19, 21, 29-35, 37, 39 and 40 were previously canceled, without prejudice or disclaimer of the subject matter contained therein. Claims 3, 5-9, 18, 20, 22-26, 28, 36, 38 and 41-42 are thus pending in the present application.

No new matter has been added with the amendment to the claims. The various claims have been amended to delete the non-elected heterocycles and heterocyclic substituents.

Based upon the above considerations, entry of the present amendment is respectfully requested.

In view of the following remarks, Applicants respectfully request that the Examiner withdraw the only rejection and allow the currently pending claims.

Election/Restriction

In the Office Action, the Examiner states that additional heterocycles and heterocyclic substituents pertain to non-elected subject matter. In this regard, Applicants respectfully refer the Examiner to the claims as shown herein. The heterocycles and heterocyclic substituents have

been deleted from the claims. It is believed that the claims as pending comply with the elected subject matter.

Obviousness-Type Double Patenting Rejection

Claims 1-9, 16-18, 20, 23, 26-28, 36 and 41 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-23 of copending Application No. 11/658,901.

Applicants respectfully traverse and request reconsideration in light of the amendments to the claims in the present application. Otherwise, Applicants request this provisional rejection be held in abeyance until the cited copending application or the present application issues as a patent.

Conclusion

In view of the above amendment, Applicants believe the pending application is in condition for allowance.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Eugene T. Perez, Reg. No. 48,501 at the telephone number of the undersigned below, to conduct an interview in an effort to expedite prosecution in connection with the present application.


Application No. 10/573,890
Art Unit 1625
Reply to Office Action of January 19, 2010

Docket No.: 3939-0118PUS1

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37.C.F.R. §§1.16 or 1.17; particularly, extension of time fees.

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Respectfully submitted,

By  #418,501
John W. Bailey
Registration No.: 32,881
BIRCH, STEWART, KOLASCH & BIRCH, LLP
8110 Gatehouse Road, Suite 100 East
P.O. Box 747
Falls Church, Virginia 22040-0747
(703) 205-8000
Attorney for Applicant